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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of LEAH
and JOSEPH RICHARD
CRUSE.

B290246

(Los Angeles County
Super. Ct. No. BD632593)

LEAH CRUSE,

Respondent,

v.

JOSEPH RICHARD CRUSE,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Lawrence P. Riff, Judge. Affirmed.

Joseph R. Cruse, Jr., in pro. per., for Appellant.

No appearance for Respondent.

Appellant Joseph Richard Cruse (husband) appeals the superior court's order denying without prejudice his request for an order modifying an earlier spousal support order. Respondent Leah Cruse (wife) opposed husband's request. The superior court found husband failed to demonstrate a material change in circumstances. We conclude the superior court did not abuse its discretion and, accordingly, we affirm.

BACKGROUND

1. Stipulated Marital Settlement Agreement and Final Judgment of Dissolution

On July 31, 2017, husband and wife executed a stipulated marital settlement agreement, through which they sought to resolve all issues related to the dissolution of their 25-year marriage (stipulated agreement). Among other things, the stipulated agreement addressed both child support and spousal support. With respect to spousal support, the stipulated agreement provided in relevant part: "Husband will pay spousal support of \$500.00 per month on the first of each month starting from August 1, 2017. Such support shall continue until Wife remarries or becomes self-supporting to the point that she earns the same amount as Husband, whichever comes first. [¶] . . . Once Wife remarries or becomes self-sufficient, the court's ability and jurisdiction to award or modify spousal support as to Wife shall terminate. No court shall have jurisdiction to award any spousal support or alimony after this from Husband to Wife regardless of the circumstances. This waiver of spousal support is an integral part of this Agreement and shall not be altered or amended by any court for any reason whatsoever. Any order made by a court in this regard shall be null and void regardless of the circumstances."

Although husband and wife executed the stipulated agreement in July 2017, the superior court did not approve and file the final judgment of dissolution, which included the stipulated agreement, until November 16, 2017 (final judgment).

2. Husband's Request for Order

On January 30, 2018, two and a half months after entry of the final judgment and approval of the stipulated agreement, husband filed a request for order seeking to terminate his spousal support obligation and to modify his child support obligation. In support of his request for order, husband filed a declaration detailing changed circumstances he claimed warranted the requested changes to the support orders. First, husband explained he lost income due to time spent traveling to see his older son in San Diego, whom husband claims wife abducted. Second, husband stated a colleague died suddenly in January 2017 and husband had received most of his business referrals through that colleague. Third, husband stated his largest client filed for bankruptcy after the stipulated agreement was signed but before it was approved by the court. He explained he had been left holding the bills for significant travel and deposition expenses for that client. Fourth, husband stated that in November 2017, he suffered unexpected and significant medical issues, which required hospitalization, emergency surgery, and a prescription for expensive monthly medication for the rest of his life. Husband said he lost significant time from work as a result of his medical issues.

In his declaration, husband also claimed wife earned more than he did. Husband argued, therefore, according to the terms of the final judgment and stipulated agreement, the court was required to terminate spousal support. Husband attached to his

declaration a copy of wife's resume and a one-page printout of wife's personal profile from an on-line Web site.

In connection with his request for order, husband filed an income and expense declaration, in which he stated his monthly expenses were \$6,875 and his gross monthly income was \$2,500. Husband attached three pay stubs to his income and expense declaration. Those pay stubs were dated February 17, 2017; March 3, 2017; and October 13, 2017. Husband did not explain why he chose those particular pay stubs. In addition, based on his belief wife worked 40 hours a week and was paid \$28 an hour, husband estimated wife's gross monthly income was \$4,853.33.

In response to the request for order, wife filed a responsive declaration, stating she did not consent to the requested modifications. Wife stated husband was at least \$8,000 behind in his support payments and had failed to make any support payments since at least October 2017. Wife stated that during their marriage, husband had earned an average net monthly income of \$6,000. Despite husband's unsubstantiated claims of medical issues, wife did not believe husband was precluded from earning enough to maintain his support obligations. Instead, wife believed given husband's education and experience as a practicing attorney for over 20 years, husband could afford his monthly support obligations. Wife also explained that after she and husband adopted their two children, she had worked part-time, earning approximately \$400 each month. She said she had no formal college education. Wife also noted she was unable to ascertain from the documents husband had submitted to the court exactly how husband's income had changed. Included with her declaration, wife attached copies of text messages with husband indicating that since at least December 2016, husband

had been late with his support payments and had been experiencing financial difficulties.

3. Hearing and Ruling on Request for Order

On March 21, 2018, the superior court held a hearing on the request for order. At the hearing, wife testified she was working between 35 and 40 hours a week (depending on the season) and earned \$21 an hour. Her counsel also noted wife had been working at the time the stipulated agreement and final judgment were entered, arguing, “So if the parties contemplated that she’s not self-sufficient at that time, nothing much has changed since November.”

Counsel for wife indicated she “just [didn’t] believe” husband and claimed he was making more money than he represented. Counsel argued, “Based on what [wife] has been telling me that [husband] has a tendency of keeping very sloppy bookkeeping with respect to his finances, and [wife] used to be his bookkeeper for a period of time, and as such, she truly believed that he’s making more. . . . [T]here [are] no actual records, not to mention that he failed to attach the proper paystubs to be used to his [income and expense declaration].” Counsel also questioned how husband was able to pay approximately \$6,800 in monthly expenses when he had estimated his monthly income was \$2,500. Given husband’s legal background and experience, wife’s counsel did not think husband’s estimated salary was credible.

When questioned by the court as to how he paid his monthly bills, husband responded, “I must have made a mistake” on the income and expense declaration. However, husband also reiterated he continued to receive significant medical bills and just the day before he had received two bills totaling approximately \$600.

At the close of the hearing, the superior court issued its ruling, denying husband's request for order without prejudice. The court stated, "I'm denying the request for order without prejudice. I'm doing so, Mr. Cruse, because I don't think you've carried your burden so that there's a material change of circumstances. I'm just not satisfied that I really know what's going on with your business or your health. [¶] . . . [Y]ou've admitted to me that your I&E under penalty of perjury is inaccurate. You have not attached paystubs as required nor really told me they don't exist so that's the answer. I've denied it on this record." The court explained husband could file another request for order, and seemed to believe he would do so, stating, "I acknowledge it is an unsatisfactory outcome for everyone, including me because I know you're going to be back here. I wish I had a better record, but really I don't. So that's the order."

The minute order from the hearing stated, "Court finds [husband] has not carried his burden and there is no material change of circumstance."

Husband appealed.

DISCUSSION

On appeal, husband argues the superior court erred in denying his request to terminate his spousal support obligation. Husband does not argue the court erred in denying his request to modify his child support obligation. Wife did not file a respondent's brief in this appeal. As explained below, we find no abuse of discretion and affirm.

1. Applicable Law and Standard of Review

With certain exceptions not relevant here, the superior court may modify a support order at any time. (Fam. Code, § 3651, subd. (a).) However, "[a] motion for modification of

spousal support may only be granted if there has been a material change of circumstances since the last order.’” (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1479 (*Khera & Sameer*); *In re Marriage of West* (2007) 152 Cal.App.4th 240, 246 (*West*).) “ ‘Absent a change of circumstances, a motion for modification is nothing more than an impermissible collateral attack on a prior final order.’ ” (*Khera & Sameer*, at p. 1479.)

“ ‘The moving party has the burden of showing a material change of circumstances since the last order was made.’ ” (*Khera & Sameer*, *supra*, 206 Cal.App.4th at p. 1480.) “ ‘Change of circumstances’ means a reduction or increase in the supporting spouse’s ability to pay and/or an increase or decrease in the supported spouse’s needs. It includes all factors affecting need and the ability to pay.” (*West*, *supra*, 152 Cal.App.4th at p. 246.) “ ‘Circumstances accounted for in the previous order cannot constitute a change of circumstances.’ ” (*Khera & Sameer*, at p. 1476.)

We review the superior court’s order denying husband’s request for order for an abuse of discretion. (*Khera & Sameer*, *supra*, 206 Cal.App.4th at p. 1484.) “It is a fundamental rule of appellate review that a judgment is presumed correct and the appealing party must affirmatively show error. [Citation.] ‘[A] reviewing court should not disturb the exercise of a trial court’s discretion unless it appears that there has been a miscarriage of justice.’ ” (*Ibid.*) “ ‘In exercising its discretion the trial court must follow established legal principles and base its findings on substantial evidence. . . . If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court.’ ” (*West*, *supra*, 152 Cal.App.4th at p. 246.)

“ ‘ “So long as the court exercised its discretion along legal lines, its decision will not be reversed on appeal if there is substantial evidence to support it.” ’ ” (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 398.)

2. The superior court did not abuse its discretion in denying husband’s request without prejudice.

The sole issue before us is whether the superior court abused its discretion when it denied husband’s request to terminate his spousal support obligation. Husband claims he provided “overwhelming evidence” of a change of circumstances warranting termination of spousal support. We disagree.

Under the terms of the stipulated agreement, husband’s obligation to pay spousal support ends when wife either remarries or becomes self-supporting. According to the stipulated agreement, wife will be self-supporting when “she earns the same amount as Husband.” Husband claims he demonstrated wife now earns as much if not more than he does and, therefore, is self-supporting as defined by the stipulated agreement.

As noted above, in support of his position, husband filed a declaration stating four reasons why the superior court should grant the requested spousal and child support changes. Two of his stated reasons, however, occurred before he and wife executed the stipulated judgment—namely, lost income due to time husband spent traveling to see his son and loss of business referrals due to the January 2017 death of husband’s colleague. Thus, because those two events were circumstances that existed before entry of the final judgment, they cannot and do not constitute a change in circumstances. (*Khera & Sameer, supra*,

206 Cal.App.4th at p. 1476.) Indeed, husband does not rely on those reasons in his brief on appeal.

The remaining reasons for husband's requested change of order were his allegedly decreased income due to the bankruptcy of his primary client and his own unexpected and significant medical issues and resulting medical bills. We conclude the superior court did not abuse its discretion in finding the record did not support these allegations. Although husband states the evidence of his changed circumstances was "overwhelming," the only evidence husband offered was his own declaration and three pay stubs, two of which were from early (i.e., months before he and wife executed the stipulated agreement). Husband asserts the three pay stubs were his "last three pay stubs," and they showed his gross annual income was only \$16,000. However, if true, husband does not address or explain the fact that as of July 31, 2017, when he signed the stipulated agreement, he had not received a paycheck for five months and his year to date gross pay was \$15,150. On this record, husband's alleged decreased income was not a material change of circumstance since the last order. (*Khera & Sameer, supra*, 206 Cal.App.4th at p. 1476.)

In addition, as to husband's medical condition and bills, we conclude the superior court did not abuse its discretion in determining the record did not support husband's claims. Other than his own declaration and testimony, husband provided no documentation evidencing his illness or resulting medical bills. This is not to say husband lied when he reported his unexpected and significant health issues. Rather, it is to say husband failed to demonstrate with sufficient evidence the impact his health had or has on his ability to pay spousal support. Common sense as well as the income and expense form itself dictate husband

should have included documentation (e.g., physician evaluations, hospital bills, and prescription medication invoices) to support his declaration. (See *Khera & Sameer*, *supra*, 206 Cal.App.4th at p. 1481.)

Finally, to the extent husband asks us to reweigh the evidence and determine he was more credible than wife, that is not the role of the reviewing court. (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 34.)

We note the superior court did not hold loss of income or significant medical issues could never constitute changed circumstances warranting a change of order. Rather, the court held husband had failed to provide sufficient evidence to support his claims. In effect, the court found husband's declaration and three pay stubs—the only evidence he submitted in support of his request for order—were insufficient. We find no abuse of discretion.

DISPOSITION

The order is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.